IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

OP.No. 9193 of 1999(T)

PETITIONER:

E.N.MURALI,
19/284, ELAVANTHIKKAL HOUSE
P.O. CHALAPPURAM, CALICUT.

BY ADV. SRI.PGK.WARRIER
SRI.K.S.MENON
SRI.P.BALAKRISHNAN

RESPONDENTS:

COMMISSIONER OF INCOME -TAX
CALICUT.

BY ADV. SRI.P.K.RAVINDRANATHA MENON (SR.)
SRI.GEORGE K. GEORGE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/03/2007, ALONG WITH OP NO. 9213 OF 1999 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.15293/1999 IN OP.9193/1999

DISMISSED

5.3.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE DECLARATION UNDER THE KVS SCHEME FILED BY PETITIONER FOR THE A.YS 1988-89 & 1993-94.

EXT.P2:- -DO- -DO- FOR THE ASSESSMENT YEAR 1989-90 , 1990-01 AND 1991-1992.

EXT.P3:- -DO- -DO- FOR THE ASSESSMENT YEAR 1992-93 AND 1994-95.

EXT.P4:- COPY OF THE ORDER OF THE RESPONDENT DT.17.11.98 UNDER SECTION 264 OF THE INCOME TAX ACT,1961.

EXT.P5:- COPY OF THE ORDER OF THE RESPONDENT DT.18.11.98 REGARDING EXTS.P1 TO P3.

/TRUE COPY/

tss

S. SIRI JAGAN, J.

O.P.NO. 9193/99 &
O.P.NO.9213 OF 1999

DATED THIS THE 5th DAY OF MARCH, 2007

JUDGMENT

The issues involved in these two original petitions are identical and therefore these original petitions are being disposed of by this common judgment.

2. The matter relates to the claims of the petitioners under the Kar Vivad Samadhan Scheme 1998 declared by the Finance Act No.2/98 passed by the Parliament. Under the said scheme assessees intending to avail of the benefits of the said scheme had to file a declaration between 1st September 1998 and 31st December 1998. (It was stated at the bar that this period was extended for a period of one month, which is not relevant for the purposes of this case.) For becoming entitled to the benefits of the scheme, inter alia, the amount in dispute must be in arrears and an appeal or reference or writ petition in respect of the same must have been admitted and pending before any appellate authority or the High Court or the Supreme Court on the date of filing of the declaration.

3. The petitioners in both original petitions had filed the

revision petitions in respect of the amount in dispute for three assessment years on 31.8.1998. They filed declaration under the scheme on 14.10.98. It is admitted by both sides that the amount in dispute was in arrears as on the date of declaration. Thus as on the date of filing of declarations they were prima facie entitled to get their claim under the Kar Vivad Samadhan Scheme 1998 considered in accordance with the scheme. But before considering the declarations for the benefits under the scheme, the respondent took up the revision petitions for hearing and dismissed the same on 17.11.98 by Ext.P4 order (in both original petitions). Thereafter the declarations of the petitioners were took up by the respondent for consideration and by Ext.P5 order dated 18.11.1998 (in both original petitions) rejected the petitioners' claim under the scheme on the ground that no appeal, reference writ or any valid revision petition is pending in respect of the petitioners' case and therefore the scheme has no application to the petitioners' case. The petitioners are challenging Ext.P4 and P5 orders (in both cases) in these original petitions.

4. The petitioners rely on the decision of this Court in **Lukkose John Thoppial Vs. Commissioner of Income Tax (242 ITR (1))** and the decision of the Division Bench in appeal against that decision in **Commissioner of Income Tax Vs.(1) Mrs. Leelamma John Thoppil(W.A.NO.106 of 2000)(2) Lukkose John Thoppil (W.A.No.233 of 2000) (267 ITR 289)** as also the

judgment of the Supreme Court in **Dr. Mrs. Renuka Datla and others Vs. Commissioner of Income Tax and another (259 ITR 258 SC).** On the basis of the ratio of those decisions, the counsel for the petitioners would contend that what is relevant for the purpose of the Kar Vivad Samadhan Scheme 1998 is pendency of a revision as on the date of filing declaration and not as on the date of consideration of the declaration for benefit under the Kar Vivad Samadhan Scheme by the authority competent to pass orders under the Scheme.

5. In view of the above said decisions, it is settled law that what is relevant for the purpose of the scheme is pendency of the revisions as on the date of declaration made by the petitioners under the scheme. Admittedly, the declarations were made on 14.10.98 and the revisions were pending at that time, the same having been filed on 27.8.98. That being so, the fact that the revisions were later dismissed on 17.11.98 and the respondent who himself was the authority to pass orders under the scheme and the revisional authority, took up the declaration for consideration for granting benefit under the Kar Vivad Samadhan scheme only on 18.11.98, i.e., after dismissing the revisions of the petitioners, is no ground for rejecting the claim of the petitioners under the scheme.

6. Learned standing counsel for the Income Tax Department also couldn't dispute this factual position as also the legal preposition as laid down in the above said decision. Further

Section 92 of the Finance Act No.2 of 98 reads as under:-

> "**Appellate authority not to proceed in certain cases.**- No appellate authority shall proceed to decide any issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrear specified in the declaration and in respect of which an order had been made under section 90 by the designated authority or the payment of the sum determined under that section:
>
> Provided that in case an appeal is filed by a Department of the Central Government in respect of such issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrear (except where the tax arrear comprise only penalty, fine or interest), the appellate authority shall decide the appeal irrespective of such declaration."

7. In view of this Section since the petitioners had filed declarations on 14.10.98 the respondent was not empowered to proceed with the revisions in respect of the disputed amounts and the respondent ought to have considered the declarations of the petitioners for benefits under the scheme, first. He having failed to do so both Exts.P4 and P5 orders (in both original petitions) are bad in law and liable to be set aside. I do so. Consequently the respondent is liable to reconsider the declarations of the petitioners in accordance with the Kar Vivad Samadhan Scheme,1998.

Therefore both the matters are remanded to the respondent for fresh consideration of the declarations filed by the petitioners on 14.10.98 in accordance with the Kar Vivad Samadhan Scheme 1998

afresh. The respondent shall consider the same and pass appropriate orders as contemplated under the Scheme as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this judgment. If the decision of the respondent on the declaration is in favour of the petitioners the revision petitions shall be disposed of in terms of that decision. If the same is against the petitioners, the revision petitions shall be heard and disposed of afresh on merits.

Original petitions are allowed as above.

S. SIRI JAGAN, JUDGE

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